

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORIO FIGUEROA-OCHOA,

Defendant.

NO: 2:13-CR-2103-TOR-1

ORDER GRANTING DEFENDANT'S
MOTION TO WITHDRAW
REMAINING § 2255 CLAIM

BEFORE THE COURT is Defendant's Motion to Withdraw Petitioner's 28 U.S.C. § 2255 Motion (ECF No. 400). A hearing was held in this matter on September 13, 2016. The Defendant was present with the services of an interpreter and was represented by appointed counsel, Robin C. Emmans. Plaintiff was represented by Meghan McCalla, in place of Benjamin David Seal. The Court has reviewed the pleadings and the record therein, heard from counsel and the Defendant and is fully informed.

Defendant filed a 28 U.S.C. § 2255 motion seeking to vacate his conviction and sentence. ECF No. 364, 369. The Court denied Defendant's motion as to all

ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW REMAINING §
2255 CLAIM ~ 1

1 claims contained therein, except as to Defendant's third claim, for which the Court
2 set the matter for an evidentiary hearing. ECF No. 382.

3 After full discussion with appointed counsel, Defendant now no longer seeks
4 to pursue his third claim for relief which the Court set for an evidentiary hearing.
5 The Court having previously **DENIED** Defendant's first, second, fourth, and fifth
6 claims for relief, will now **DENY** the § 2255 motion in its entirety.

7 A petitioner seeking post-conviction relief may appeal a district court's
8 dismissal of the court's final order in a proceeding under 28 U.S.C. § 2255 only
9 after obtaining a certificate of appealability ("COA") from a district or circuit
10 judge. 28 U.S.C. § 2253(c)(1)(B). A COA may issue only where the applicant has
11 made "a substantial showing of the denial of a constitutional right." *See id.*
12 § 2253(c)(2). To satisfy this standard, the applicant must "show that reasonable
13 jurists could debate whether (or, for that matter, agree that) the petition should
14 have been resolved in a different manner or that the issues presented were adequate
15 to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S.
16 322, 336 (2003) (internal quotation marks and citation omitted).

17 The Court concludes that Defendant is not entitled to a COA because he has
18 not demonstrated that jurists of reason could disagree with the Court's resolution of
19 his constitutional claim or conclude the issues presented deserve encouragement to
20 proceed further.

IT IS ORDERED:

1. Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (ECF Nos. 365; 369) is **DENIED**.
2. The United States Marshal shall transfer Defendant back to the custody of the Bureau of Prisons for service of the remainder of his sentence.
3. The District Court Executive is directed to enter this Order, furnish copies to counsel and the U.S. Marshal Service.
4. The Court further certifies that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

This file and the corresponding civil file shall be **CLOSED**.

DATED September 15, 2016.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge